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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:

JAMES HALBROOK ET AL.

Serial No.: 09/941,897

Filed: August 28, 2001

For: **MATERIALS AND METHODS TO
POTENTIATE CANCER TREATMENT**

Attorney Docket No. 27866/37676

Group Art Unit: 1614

Examiner: Kahsay Habte

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Dated: December 4, 2002

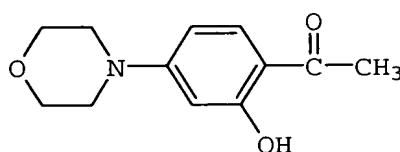
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RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action dated October 18, 2002, applicants hereby elect the species represented by 1-(2-hydroxy-4-morpholin-4-yl-phenyl)-ethanone, i.e., Example 34 at pages 111 and 112 of the specification, and having a structure



with traverse. It is submitted, however, that all species should be examined at this time. In particular, the elected species is so closely related to the nonelected species that a search for the elected species would necessarily encompass a search for the nonelected species.

In addition, there is no evidence that a search and examination directed to all species would be a *serious burden* on the examiner, as is required by M.P.E.P. §803. ("If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." and "There must be a serious burden on the examiner if restriction is not required.")

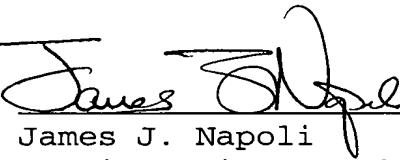
Because search and examination of the entire application can be made without serious burden on the examiner, it would be wasteful of the time, effort, and resources of both the applicants and the Patent Office to prosecute various species in separate applications. Search and examination of all species in a single application would be much more efficient than requiring the Patent Office and applicants to prosecute the various species in separate applications. Accordingly, it is submitted that all species should be examined at this time.

Reconsideration and withdrawal of the restriction requirement are respectfully requested. An early action of the merits on all claims is solicited.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN

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